UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THIRTEEN

KM PLANT SERVICES
Employer

And Cases 13-RC-21415
13-RC-21404

LABORERS INTERNATIONAL UNION OF NORTH AMERICA,
MIDWEST ORGANIZING COMMITTEE ON BEHALF OF
LOCAL 41 AND LOCAL 81
Petitioner No. 1[1]

And

LOCAL NO. 142, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS
Petitioner No. 2[2]

And

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES,

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[1] The Laborers International Union of North America, Midwest Organizing Committee on Behalf of Locals 41 and 81 (hereinafter "Laborers") filed their original RC petition, 13-RC-21404 on October 19, 2005 and sought a unit of "all industrial cleaning, hydro demolition, asbestos abatement and haz-mat type work" as well as "[s]andblasting and all general laborer duties as required (Shoveling, sweeping, wheelbarelling (sic), etc" excluding "truck driving, operating employers (sic) trucks and trailer mounter (sic) equipment" as well as supervisory personnel, secretaries and guards and "[a]nd all others excluded by 'the Act.'" Then, the Laborers amended their petition to seek "all industrial cleaning, hydro demolition, asbestos and haz-mat type work" as well as "[a]ll general laborer duties required (1st man off vacuum trucks, shoveling, sweeping, wheelbarreling, sand/water blasting not related to painting preparation, etc." This amended unit sought to exclude "truck driving, operating employer trucks and trailer mounter equipment" as well as "[a]ll janitorial services" and "[a]ll vacuum truck work except as included" and also excluded "supervisors, clerical, guards and all excluded by the Act." At the hearing, the Laborers further amended their petition to clarify that they were seeking all employees at the Employer plants in Illinois and Indiana which include: Pekin, Illinois, Shanahan, Illinois, Crawfordsville, Indiana and Hammond, Indiana.

[2] Local 142, International Brotherhood of Teamsters (hereinafter "Teamsters") filed a petition in Case 13-RC-21415 seeking a unit of "truck drivers, operating employee truck and trailer mounted equipment" and excluding "all industrial cleaning hydrodemolition, abatement and haz mat type work, sandblasting general labor duties, supervisors personnel secretaries, guards and all other (sic) excluded by the Act."

Intervenor[3]

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on the consolidated petitions was held on December 19, 2005, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.[4]

I. ISSUES

These petitions raise the following issues: 1) whether the Board should defer to the award and decision of the AFL-CIO arbitrator awarding the Painters rights to represent this unit; 2) assuming that the Painters had proper jurisdiction over this unit, whether the Laborers qualifies as a bona fide labor organization under the Act, 3) whether either of the two above-captioned petitions, as amended, constitute an appropriate bargaining unit for the purposes of collective bargaining 4) whether the historical bargaining unit represented by the Painters in this case should take precedence and 5) whether the business operated by KM qualifies as a seasonal operation such that the election should be delayed to accommodate seasonal employees.

II. DECISION

For the reasons discussed in detail below, primarily based on the substantial history of collective bargaining and also due to the functional integration of employees at the Employer's facilities in Crawfordsville and Hammond, Indiana and Pekin and Shanahan, Illinois, I find that the units sought by the Laborers in Case 13-RC-21404 and the Teamsters in Case 13-RC-21415 are not appropriate units; rather the historical bargaining unit shared between the Painters and the

[3] According to the most recent collective bargaining agreement between the International Union of Painters and Allied Trades (hereinafter "Painters" or "Intervenor"), the Intervenor in this case has represented "all employees" at the Employer's facilities in Pekin and Shanahan, Illinois and Hammond, Indiana. They have indicated however that they would be willing to proceed to an election for all employees of the Employer's four facilities which includes the additional facility in Crawfordsville, Indiana.

[4] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The labor organizations involved claim to represent certain employees of the Employers.

d. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Employer is the appropriate unit within the meaning of Section 9(b) of the Act for purposes of collective bargaining. Because the record reflects that the Laborers and the Painters agreed to proceed to an election with a unit consisting of that historical unit and because the Teamsters took no position on the matter, I hereby direct an election to be held encompassing the field technicians and field operators at the Employer's facilities located in Crawfordsville and Hammond, Indiana and Pekin and Shanahan, Illinois.

Also, despite the position taken by the Employer and the Painters Union that an election should not be immediately scheduled, I find that the Employer does not qualify as a seasonal Employer and thus order an election to be held immediately.

Based on these findings:

1. IT IS HEREBY ORDERED that the Petition in Case 13-RC-21415 is dismissed.
2. I shall direct an election in the bargaining unit which is described as follows:

> All full-time and regular part-time field technicians and field operators employed by the Employer at its facilities currently located at Crawfordsville and Hammond, Indiana and Pekin and Shanahan, Illinois excluding all office clerical employees and guards, professional employees and supervisors as defined by the Act.[5]

3. Although the unit found appropriate herein is broader than initially sought by each of the Petitioners, I shall direct an election and both Petitioners are hereby notified that they have 14 days to submit the additional evidence of showing of interest. These 14 days will be counted from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision.
4. In addition, as I have directed an election in a unit larger than that sought by the Petitioners, both are permitted to withdraw their petitions without prejudice upon written notice to me within 10 days from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision. *Independent Linen Service Company of Mississippi*, 122 NLRB 1002, 1005 (1959).

III. STATEMENT OF FACTS

A. Overview

The Employer, KM Plant Services, is in the business of providing industrial cleaning to industrial plants and mills. The Employer has plants in Crawfordsville and Hammond, Indiana and Pekin and Shanahan, Illinois. At the Pekin, Illinois facility, there are approximately 25 to 30 employees. In Shanahan, Illinois there are approximately 15 to 20 employees. The majority of employees operate out of Hammond, Indiana however.[6]

[5] The transcript contains limited references to mechanics however there is no evidence as to whether this classification has been included in the historical unit represented by the Painters and there is no evidence as to the parties' position on whether they seek to represent this unit. Therefore, I find that the mechanics will vote subject to challenge.

[6] The record is unclear as to how many employees work from the Crawfordsville, Indiana

KM provides industrial cleaning services at industrial work sites, power plants, steel mills, oxygen furnaces, cold mills, and food manufacturing facilities. In general, employees will clean out blast furnace troughs, acid tanks, vats, other tanks, and then will shovel away or vacuum the excess, according to the customer's wishes. At power plants, KM employees will also clean hoppers and boilers as well as un-clog bathrooms. At steel mills, KM employees will clean spillage from pallet ore, coke, and coal from the rail cars.

The employees at issue are known by the Employer as field technicians and field operators. The Employer also employs an unknown set of mechanics from its Hammond, Indiana facility. The record reflects that all employees perform a variety of functions regardless of their title and from the record, their job descriptions easily blur into one another. For example, field technicians and field operators both perform work operating the hoses, vacuuming or cleaning. Field technicians also occasionally drive the vehicles if they are qualified. In general, field operators run the equipment attached to the vehicles such as the vacuum hoses and the heavy industrial motorized equipment. In fact, field operators spend a minimal amount of time on the road driving, usually about 10-15 percent in an average week. From the record, most of their day is spent cleaning and monitoring the equipment during the job. Some of the operators possess a CDL license and some of them have obtained special certifications such as hazardous materials training.[7] Another subset of operators drive pick-up trucks known as "stake trucks" for which no CDL license is required.[8] They may however on occasion drive the heavy industrial motorized equipment but only on private property where no CDL license is required. These drivers typically drive even less than those CDL-certified drivers who can drive the heavy machinery on the public ways. Usually, the pick-up drivers will only drive to and from the work-site in the stake trucks.

In terms of interchange among the Employer's facilities, the record indicates that there is much interchange among the employees of the Employer's four facilities. Employees will be sent in to fill in for one other or will assist with a job depending on the demands of a particular office's workload or special needs of the job. If a crew member is sick, replacements are found from a pool of available employees. If a worker becomes ill on a job, employees will shift around their job duties and responsibilities to cover the loss of manpower. Often this entails a CDL qualified driver moving equipment around to different sites and in a pinch, drivers who do not possess CDL licenses will move equipment on private property to assist in getting the work completed.

KM employees share the same wages, hours and working conditions at each of the four locations. There is a standard procedure for the taking of vacations, sick leave, etc. The Employer applies a standard Code of Safe Practices to all of its employees. They participate in the same OSHA certification training upon their hire and then receive additional skills training for certification in certain skills such as sand and water blasting. Drivers are given additional training related to the operation of the specialized equipment. All employees are subject to pre-hire drug testing and are required to submit to a physical exam prior to employment. Once employed, they are all paid hourly, and all have the same pay cycle. They all wear the same

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location.

[7] The record reflects that the Employer employs approximately 10 to 15 CDL drivers.

[8] This subset of operators is known by employees as "operator friendly" operators.

uniform which includes special glasses, boots, hard hats, rain, fire retardant and chemical protective gear.

Currently, employees covered under the Painters collective bargaining agreement share the same health insurance benefits. There also is uniform control of labor relations out of the Employer's Hammond, Indiana location.

The Employer operates its business year round. However, it does experience some seasonal peaks. For example, in May, the Employer may have as many as 700 employees but during slow periods may have as few as 200 working. At the current time there are approximately 400 employees on staff. The employees utilized during peak times appear from the record to be eligible for recall as they are in layoff status. The Employer similarly uses replacement workers from a temp agency but uses only those employees who have previously attended Company training.

B. History of Bargaining

The record indicates that the Employer has had a stable bargaining relationship with the Painters for over twenty years. The last contract between the parties expired on December 31, 2005. The petition in Case 13RC-21404 was filed during the open prior to the expiration of the now-expired Painters agreement. The Painters Union represents KM's employees at Pekin, Illinois, Shanahan, Illinois and Hammond, Indiana.

Within this industry, the record reflects that wall to wall agreements are the industry standard. For example, the Employer's major competitor has an identical agreement with the Painters Union.

C. Laborers and Painters Submit to Article XX Process through AFL-CIO

The record reflects that after a jurisdictional dispute was prompted by the filing of the petition in 13-RC-21404, both the Painters and the Laborers proceeded to arbitration through the AFL-CIO's Article XX dispute resolution mechanism. On December 1, 2005, the AFL arbitrator determined that the Painters' Union was entitled to represent the employees of KM.

At the hearing, the Painters filed a Motion to Dismiss the Petition. The Painters argue that pursuant to the AFL-CIO's Article XX proceedings, the neutral umpire ruled that the Laborers' were in violation of that article's provision against raiding an established AFL-CIO's represented bargaining unit. They also argue that jurisdictional boundaries make it impossible for the Laborers or the Teamsters to represent this unit. Similarly, the Employer argues that due to this jurisdictional barrier, the Laborers are not a "labor organization" that is entitled to represent the employees of KM.

IV. DISCUSSION

A. Deferral to the AFL-CIO's Article XX Proceeding

The issue was raised by the Employer and the incumbent union that petition should be dismissed because of the no-raid decision by the AFL-CIO. While the Board has sanctioned

deferral to Article XX procedures in the past, this has been done when there exists the possibility of a voluntary resolution. *Anheuser-Busch, Inc*., 246 NLRB 29, 30 (1979); *VFL Technology Corporation,* 329 NLRB 458, 460 (1999). In other words, when the parties agree to submit to the ruling of the neutral arbitrator and by so doing one Petitioner withdraws voluntarily, the Board has deferred in those instances. *Id.*

However, if either Petitioner chooses not to withdraw based upon the arbitrator's ruling, the Board will not defer to the decision of the Article XX proceeding. To do so, according to precedent, would be to defer representation questions to private resolution, thereby impinging on the Board's jurisdiction to resolve such questions. Accordingly, if the losing party in an Article XX no raid proceeding does not thereafter "voluntarily" disclaim interest or w/d its petition, the Board will continue to process the petition. *Weather Vane Outerwear Corp.*, 233 NLRB 414 (1977); *Anheuser-Busch, Inc*., 246 NLRB 29, 30 (1979); *VFL Technology Corporation,* 329 NLRB 458, 460 (1999).

Here although the parties did submit to the Article XX resolution mechanism, the Laborers chose to disregard the ruling thereby keeping their petition in Case 13-RC-21404. Therefore, based upon Board precedent, no deferral is required. *Id.*

The Employer argues that Board precedent in the 10(k) arena provides justification for deferral to the Article XX decision. They rely upon case law such as *IUOE Local 513 (Thomas Ind. Coatings, Inc.)*, 345 NLRB No. 78 (2005). However, in *IUOE Local 513*, the Board deferred to a voluntary adjustment mechanism without deciding the jurisdictional issue because it wished to encourage voluntary resolution so as not to impede the wheels of commerce and maintain labor peace.

In the representational arena, however there are competing concerns not present with jurisdictional workplace disputes. First the Board holds paramount the rights of employees to join or refrain from joining a labor organization. This bedrock principle is not present when, as in a jurisdictional dispute two competing labor organizations are vying for the same work. Thus, the 10(k) case law used by the Employer by analogy to argue that deferral is required is inapposite.

B. <u>Labor Organization Status of the Laborers and Teamsters</u>

Section 9(c)(1)(A) of the Act provides that employees may be represented by "any employee or group of employees or any individual or labor organization." Section 2(5) of the Act defines "labor organization" as "any organization of any kind, or any agency or employee representative or committee or plan, in which employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work."

The record reflects that the Laborers, both Local 41 and 81, currently have committees which provide representation to members in grievance settings. They also handle labor disputes, collective bargaining, and have actively discussed with members issues pertaining to wages, rates or pay, hours of employment and conditions of work. There is a current constitution and an

internal organizational structure consisting of representatives at the international, district council and local levels.

Based upon the organizational structure and the facts that Laborers clearly exist for the purpose of assisting in the representation of employees as it pertains to their working conditions, it is clear that the Laborers constitute a labor organization under the Board's standards. *Litton Business Systems*, 199 NLRB 354 (1972), *Machinists*, 159 NLRB 137 (1966). Therefore, the Employer's argument concerning the inability of Laborers to potentially represent this unit is without merit.

C. Collective Bargaining History

The Board gives substantial weight to bargaining history and is "reluctant to disturb long-standing bargaining units whether established by agreement or by certification when bargaining in those units has been successful…" *Murray Co. of Texas,*107 NLRB 1571 (1954); *Puerto Rico Steamship Assn.*, 116 NLRB 418 (1956). The Board will ordinarily find substantial appropriate bargaining history to be controlling and will not disturb a historical unit where no persuasive reason for doing so is advanced. *Central Transport, Inc.*328 NLRB 407 (1999); *Casale Industries, Inc.*, 311 NLR 951, 952 (1993); *Carrier Corp.* (1961). The Board has found persuasive bargaining history as recent as 15 months. *Owens-Illinois Glass*, 108 NLRB 947 (1954).

Based on the entire record herein, I find that there is substantial history of collective bargaining that is not contrary to any Board law or policy. The record clearly shows that there has been a history of stable collective bargaining between the Employer and the Painters Union. This history of bargaining goes back at least twenty years and this relationship has endured despite the acquisition of various additional companies and facilities.[9]

In addition, this industry has a history of supporting wall to wall agreements. For example, the records shows that KM's primary competitor, Onyx, has a nearly identical agreement to that of the Painters and KM.

The Laborers assert that the unit they seek which would essentially carve out the field technicians is appropriate by ignoring the issue of the lengthy bargaining history of the historical unit entirely. To make this argument, they rely upon *Omni International Hotel of Detroit*, 283 NLRB 475 (1987). In *Omni* however, there existed no historical unit and the Board in that case was only faced with determining whether in the hotel industry there were "compelling facts which would mandate a finding that the smallest appropriate unit must include all employees…" *Id.* at 475. This case does not concern itself with the hotel/motel industry and the Board in *Omni* does not address the issue of the effect of the historical unit and therefore is inapplicable to the issues herein. *Id.*

[9] The record reflects that the Employer has a current agreement with the Steelworkers for employees at a separate facility located in Gary, Indiana. No party seeks to include this group of employees however and as such this decision does not address that issue.

Here the historical unit which has been represented by the Painters admittedly does not cover the Crawfordsville facility but neither the Laborers nor the Teamsters have presented any basis for discounting the substantial bargaining history and disturbing the stability that has remained. Therefore, based on my finding that the bargaining history herein is entitled controlling weight in determining the scope of the appropriate unit, I find the case cited by the Laborers to be distinguishable and not applicable to the situation herein.[10]

D. Appropriateness of the Unit

Section 9(b) of the Act grants discretion to the Board to "decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." 29 U.S.C. § 159(b). The Board's procedure for determining an appropriate unit is to first examine the petitioned-for unit. *See, e.g., The Boeing Company*, 337 NLRB 152, 153 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). If the petitioned-for unit is appropriate, then the inquiry ends; if the petitioned for unit is not appropriate, the Board may examine alternative units suggested by the parties or select an appropriate unit different from those proposals. *Id*.

It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Id.; see also Phoenix Resort Corp.*, 308 NLRB 826, 827 (1992). A unit is appropriate where employees in the unit have a separate community of interest from other job classifications; in determining this community of interest, the Board examines such factors as wages, hours and working conditions, commonality of supervision, degree of skill and common functions, frequency of contact and interchange with other employees, and functional integration. *Boeing Co.*, 337 NLRB at 153.

Even assuming *arguendo* that the historical unit represented by the Painters was not entitled to precedence as discussed *supra*, I find that using the traditional factors set forth by the Board in analyzing the appropriateness of the unit, neither the Laborers and the Teamsters petitioned-for units satisfy this standard. Instead, a unit consisting of field technicians and operators and as advocated for by the Employer and Painters does qualify as an appropriate unit for purposes of collective bargaining.

Unlike a disjointed unit divided into drivers and then field technicians as contemplated by the Laborers and Teamsters, a unit comprised of both satisfies nearly all criteria of the Board. Field technicians and field operators are commonly supervised on the jobsite by a project manager. They share a functional integration in the work performed, with both operators and field technicians sharing in duties on a daily basis. There is frequent and seamless interchange among the employees at the four facilities. They share similar skills, participate in identical training, and have similar wages, hours and working conditions. The employees also wear identical uniforms while at work because of the similarity of the job duties. There also exists presently a centralized control of labor relations from the Employer's largest facility in Hammond, Indiana.

[10] The Teamsters submitted no brief in this matter therefore there is no argument to consider.

The Laborers and the Teamsters also did not present any evidence of a substantial change to the operation such that the unit composition should be reviewed again. The Teamsters, although they did not file a brief and did not complete the hearing, have petitioned for a unit consisting of drivers, thus raising the issue of whether drivers constitute a functionally distinct group. In *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137-39 (1962), the Board held that drivers are entitled to a self-determination election notwithstanding a bargaining history on a broader basis if they are a functionally distinct group of employees. However, where the traditional factors used to determine employee community of interest support a conclusion that the drivers share with other employees a majority of similarity, such will outweigh those which would be the basis for severance from the unit. *Id.* at 138.

Here like in *Kalamazoo Paper Box Corp.*, the drivers at issue share the identical same supervision, perform work during the same hours, and receive the same fringe benefits. They share the same holidays, time clocks, protective garments, and initial training as the rest of the complement of employees. They arguably spend minimal time driving but instead spend the overwhelming majority of their time working alongside, or in close proximity with, and perform exactly the same functions as other field technicians. There exists such frequent interchange with field technicians that to place them in a separately identifiable unit is wholly inappropriate.

E. <u>Election Timing</u>

Regular seasonal employees are those who have a reasonable expectation of reemployment in the foreseeable future and thus are eligible to vote. *L & B Cooling*, 267 NLRB 1 (1983); *P.G. Gray*, 128 NLRB 1026 (1960). However, if the employer is engaged in operations year round, even when the number of employees in year round employment is substantial, the Employer's business may be deemed to be "cyclical" and the Regional Director has discretion to direct an immediate election. *Candy Shops*, 202 NLRB 538 (1973). In determining whether to direct an election, an employees' rights for representation must be weighed against granting the greatest number of eligible employees the opportunity to vote. *Baugh Chemical Co.*, 150 NLRB 1034. In *Baugh*, the Board directed an immediate election when 40 out of 70 to 80 employees were on staff at the time of the election by justifying that to postpone until a seasonal peak would unduly hamper year-round employees in the enjoyment of their rights under the Act.

Analyzing whether an employee has a reasonable expectation of being rehired the Board has found that if employees were not told by the Employer that their status was temporary, the seasonal employees are eligible to vote. *Sol-Jack Co.*, 286 NLRB 1173 (1987). In *Six Flags*, 333 NLRB 666, the Board ordered an election finding that because the employees in question were eligible for recall, they were eligible to vote.

Here there are approximately 400 in the unit contemplated to be appropriate at the time of the hearing. At its seasonal peak, the Employer may have as many as 700 employees on staff.[11] The next contemplated busy season is not anticipated to begin until May 2006. Also, the

[11] Based upon the Board's consideration that even those on layoff qualify as eligible voters, the showing of interest required of both Petitioners will be based upon the record evidence that at its seasonal peak there are as many as 700 employees.

employees utilized during these peak periods appear, from the record, to be on layoff, making them eligible voters.

Based upon the Board's analysis in *Sol-Jack,* and because the peak season is not for almost six months, I believe that in order for employees to enjoy their rights under the Act, an immediate election is appropriate. *Id.*

V. CONCLUSION

Based on the foregoing and the entire record herein, I have found that the separate employer units sought by the Laborers in Case 13-RC-21404 and the Teamsters in Case 13-RC-21415 to be inappropriate. Since I have also found the bargaining unit in Case 13-RC-21404 to be an appropriate unit, and since the Laborers agreed that they would, in the alternative proceed to election based upon that unit, I here by direct that an election be held . Similarly, because I have found that the Employer does not operate in a seasonal industry the election will not be delayed.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of intent to conduct election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition in any economic strike which commenced less than 12 months before the election date, employees engage din such strike who have retained their status as strikes who have been permanently replaced as well as their replacements are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and the employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Laborers International Union of North America, Midwest Organizing Committee on behalf of Local 41 and 81; International Brotherhood of Teamsters, Local 142; International Union of Painters and Allied Trades; or no labor organization.

VII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of the issuance of the notice of intent to conduct election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 900, 209 S. LaSalle Street, Chicago, Illinois, 60604 on or before the date which will be set forth on the notice of intent to conduct election. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street. N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by _____, 2006.

DATED at Chicago, Illinois this _____ day of January 2006.

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Roberto G. Chavarry
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National Labor Relations Board
Region Thirteen
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